

# **EXHIBIT 1**

FILED  
08-16-2021  
Clerk of Circuit Court  
Sawyer County, WI  
2021CV000106

STATE OF WISCONSIN      CIRCUIT COURT      SAWYER COUNTY

JOYCE LIVINGSTON  
1800 New York Avenue  
Superior, WI 54880

Case No: 21CV\_\_  
Case Code: 30100

Plaintiff,

UNITED STATES OF AMERICA  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
c/o Ms. Leslie Herje  
222 W. Washington Avenue, Suite 700  
Madison, WI 53703; and,

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES  
One West Wilson Street; Room 651  
Madison, WI 53703; and,

Involuntary Plaintiffs,

v.

DRIVE DEVILBISS HEALTHCARE  
AKA DRIVE MEDICAL DESIGN & MFG  
99 Seaview Blvd  
Port Washington, NY 11050; and

TARGET CORPORATION  
1000 Nicolet Mall  
Minneapolis, MN 55403; and

ACE AMERICAN INSURANCE COMPANY  
436 Walnut Street  
Philadelphia, PA 19105; and

ABC INSURANCE CO.  
Address Unknown

Defendants.

PROCESS SERVER  
TIME 2:58 PM DATE 9/22/21  
( ) PERSONAL ( ) SUBSTITUTE  
( ) POSTED ( ) CORPORATE

---

SUMMONS

---

THE STATE OF WISCONSIN,

To each person named above as a defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within forty-five (45) days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Sawyer County Clerk of Court 10610 Nain Street Hayward, WI 54843, and to Curtiss N. Lein, Lein Law Offices, Plaintiff's attorney, whose address is P.O. Box 761, Hayward, Wisconsin 54843. You may have an attorney help or represent you.

If you do not provide a proper answer within forty-five (45) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future and may also be enforced by garnishment or seizure of property.

DATED this 16th day of August 2021.

Electronically signed by Curtiss N. Lein

Curtiss N. Lein, 1015280

Lein Law Offices

15692 Hwy 63 North

PO Box 761

Hayward, Wisconsin 54843

Telephone: (715) 634-4273

Fax: (715) 634-5051

Email: [contact@leinlawoffices.com](mailto:contact@leinlawoffices.com)

FILED  
08-16-2021  
Clerk of Circuit Court  
Sawyer County, WI  
2021CV000106

STATE OF WISCONSIN      CIRCUIT COURT      SAWYER COUNTY

---

JOYCE LIVINGSTON  
1800 New York Avenue  
Superior, WI 54880

Case No:      21CV\_\_  
Case Code:      30101

Plaintiff,

UNITED STATES OF AMERICA  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
c/o Ms. Leslie Herje  
222 W. Washington Avenue, Suite 700  
Madison, WI 53703; and,

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES  
One West Wilson Street; Room 651  
Madison, WI 53703; and,

Involuntary Plaintiffs,

v.

DRIVE DEVILBISS HEALTHCARE  
AKA DRIVE MEDICAL DESIGN & MFG  
99 Seaview Blvd  
Port Washington, NY 11050; and

TARGET CORPORATION  
1000 Nicolet Mall  
Minneapolis, MN 55403; and

ACE AMERICAN INSURANCE COMPANY  
436 Walnut Street  
Philadelphia, PA 19105; and

ABC INSURANCE CO.  
Address Unknown

Defendants.

---

COMPLAINT

---

The above-named plaintiff, Joyce Livingston by her attorney, Curtiss N. Lein of Lein Law Offices, alleges as follows:

- 1) That the plaintiff, Joyce Livingston ("Livingston") is an adult resident of Douglas County, State of Wisconsin, residing at 1800 New York Avenue Superior, WI 54880; and,

- 2) That the defendant, Drive DeVilbiss Healthcare (AKA Drive Medical Design & MFG) ("Drive") is a foreign corporation authorized to do business within the State of Wisconsin. Drive has its primary place of business at 99 Seaview Blvd Port Washington, NY 11050; and,
- 3) That defendant, Target Corporation ("Target") with offices located at 1000 Nicollet Mall Minneapolis, MN 55403 is a foreign corporation authorized to do business within the State of Wisconsin; and,

#### FACTS

- 4) That plaintiff, Livingston, purchased from the defendant, Target, a Drive shower stool; and
- 5) That said shower stool without warning collapsed while Livingston was sitting on it for the first time on August 15, 2018; and,
- 6) That Livingston here in alleges paragraphs 1-5 above as if stated in their entirety; and

#### CAUSE-OF-ACTION I NEGLIGENCE AGAINST TARGET

- 7) That said defendant Target was negligent in failing to properly inspect, label, place warning on said shower stool prior to its use by Livingston; and
- 8) That as a result of the negligence of Target, Livingston was injured in that she sustained past pain and suffering and disability and will sustain in the future. Additionally, she has incurred medical expenses in the past and will incur same in the future; and

#### CAUSE-OF-ACTION II NEGLIGENCE OF DRIVE

- 9) Livingston herein alleges paragraphs 1-8 above as fully stated herein; and
- 10) On August 15, 2021, by reason of the carelessness and negligence of the defendant, Drive, its agents, servants or employees, in the manufacture of shower stools, Livingston was severely injured

when the Drive manufactured stool collapsed without warning causing severe injury to Livingston;  
and

CAUSE-OF-ACTION III  
CLAIM OF STRICT LIABILITY AGAINST DRIVE

- 11) That Livingston herein alleges paragraphs 1-10 above as if fully stated herein; and
- 12) The plaintiff Livingston's injuries were proximately caused and contributed to by the defective and unreasonably dangerous condition of the shower stool and the component parts thereof, manufactured and placed in the stream of commerce by the defendant, Drive; and
- 13) The shower stool was a defective and unreasonably dangerous unit when it left the manufacturer's hands, and it remained in a substantially unchanged condition until plaintiff Livingston, fell when her shower stool gave way; and
- 14) As a proximate result of the defendant Drive's defective and unreasonably dangerous shower stool, the plaintiff was injured; and
- 15) That on information and belief ACE offered liability protection for and on behalf of the defendant, Target and therefore is a proper party to this action; and
- 16) That on information and belief ABC insurance Company is a liability insurance company for Drive and therefore is a proper party to this action; and

WHEREFORE; Joyce Livingston requests the following relief:

1. Compensatory damages consistent with the complaint.
2. Award of costs, disbursements and attorney fees allowed by statute.
3. Equity.

DATED this 16<sup>th</sup> day of August 2021.

Electronically signed by Curtiss N. Lein

Curtiss N. Lein, 1015280  
Lein Law Offices  
15692 Hwy 63 North  
PO Box 761  
Hayward, Wisconsin 54843  
Telephone: (715) 634-4273  
Fax: (715) 634-5051  
Email: [contact@leinlawoffices.com](mailto:contact@leinlawoffices.com)

Plaintiff requests a twelve-person jury trial.